Decision 04-02-065

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company (U 39 E) to Adopt a Rate Stabilization Plan.	Application 00-11-056 (Filed November 22, 2000)
Petition of The Utility Reform Network for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)

ORDER DENYING REHEARING OF DECISION 04-01-049

I. BACKGROUND AND DISCUSSION

In Decision (D.) 04-01-049 (Decision), the Commission directed Pacific Gas & Electric Company (PG&E) to have its shareholders pay $38 million in interest on a WAPA-related power charge remittance owed to the California Department of Water Resources (DWR). On February 5, 2004, PG&E filed a timely application for rehearing of D.04-01-049. The application alleges that the Decision imposes a de facto civil penalty of $24.7 million (the difference between the $38 million payment ordered by the Commission and the $13.3 million agreed upon by PG&E and DWR), and that the imposition of this penalty is arbitrary and capricious. PG&E further argues that the Decision should be modified so that any interest amount above the $13.3 million PG&E realized while holding the WAPA true-up amount is funded by PG&E's ratepayers, not PG&E's shareholders. We have reviewed PG&E's allegations of legal error and find that they do not demonstrate legal error in the Decision. Accordingly, PG&E's application for rehearing is denied.

In an earlier decision, D.03-09-017, we found that, due to the use of certain language in the servicing order and Operating Order governing PG&E, PG&E had interpreted the servicing orders in a manner that allowed it to treat DWR-supplied energy as if it were delivered for PG&E to meet its load obligation with WAPA, while withholding from DWR the power charge payments associated with this energy. We directed PG&E to remit a true-up to DWR, and further ordered PG&E to have its shareholders pay interest on this power charge remittance. In accordance with Ordering Paragraph 2(b) of D.03-09-017, PG&E filed its "Notice Regarding WAPA Interest Issue" on October 20, 2003. PG&E and DWR were allowed to determine the appropriate amount of interest that should be paid by PG&E's shareholders, subject to Commission approval. PG&E stated that it had reached agreement with DWR on the amount of interest to be paid, which totaled $13,148,307.02. That figure was updated to $13,316,623.77 in a supplemental notice. The agreed upon interest amount was based on the monthly weighted average interest rate PG&E actually earned on short term investments during the period it withheld the WAPA true-up amount from DWR.

After receiving comments on the draft decision, we determined that the appropriate interest amount should represent the actual financing costs that DWR incurred as a result of PG&E's untimely WAPA-related remittances. This cost was estimated to be approximately $38 million, which was based on a weighted average interest rate of 4.8% on the bonds that DWR issued, in part, to finance PG&E's obligations. DWR acknowledged in reply comments that it did in fact finance PG&E's under-remittances with revenue bonds, and that as a result, ratepayers in Southern California Edison Company and San Diego Gas & Electric

Company's service territories were shouldering the burden caused by PG&E's past under-remittances.

In its application for rehearing, PG&E argues that the Decision imposes a civil penalty on PG&E because it requires PG&E's shareholders to "fund an amount that exceeds the interest realized on the WAPA true-up amount during the period in which PG&E was complying with the applicable CPUC decisions." (App. at 2.) PG&E argues that remittances to DWR come from each utility's ratepayers and that the utility is no more than a billing and collection agent for DWR. PG&E acknowledges that its shareholders should not be entitled to any extra benefit from the timing of the remittance of the WAPA true-up and therefore does not object to shareholders bearing $13.3. million of the WAPA true-up interest. However, according to PG&E, if the Commission believes that $24.7 million more should be remitted to DWR from PG&E, then that money must come from PG&E's ratepayers, not PG&E.

PG&E's argument is unavailing. The Commission's determination that the interest amount should represent the actual financing costs that DWR incurred as a result of PG&E's failure to timely pay its WAPA-related remittances is reasonable. PG&E fails to explain why DWR customers should bear the financing costs that were incurred due to PG&E's untimely WAPA-related remittance. Indeed, PG&E points to no legal authority supporting its proposition. The Commission's decision to impose an interest payment to reflect the real costs associated with PG&E's delays in this transaction is reasonable, and is not arbitrary or capricious.

PG&E further argues that because it was acting in compliance with Commission decisions at all times with regard to the WAPA-related remittances, there is no factual or legal basis for penalizing PG&E for not providing the WAPA true-up to DWR earlier. PG&E further takes issue with characterizing its untimely WAPA-related payment as "delinquent." These arguments are without merit for two reasons. First, PG&E is mistaken in characterizing the payment of interest as a “penalty.” The decision requires PG&E’s shareholders to pay the real costs associated with its delay in the WAPA remittance, and no more. For the reasons discussed above, this determination is a reasonable definition of “interest” in this instance, and requiring PG&E to give back DWR its rightful monies does not constitute a civil penalty. Furthermore, as we stated in D.03-10-023:

> It was PG&E’s interpretation of various Commission decisions, which led to its untimely remittances associated with the WAPA load. PG&E assumed the risk that it would be ordered to make this true-up payment and that this payment may be considered a default or delinquent payment for which interest would be due under the servicing agreement. As explained above, PG&E’s interpretation is in conflict with various provisions of AB1X and other Commission decisions which recognize that title to this energy rightfully belongs to DWR and any monies received by PG&E during collection for actual DWR power supplied are to be segregated and held in trust for the benefit of DWR pending their transfer to DWR. As such, PG&E has offered no reason why its ratepayers should be held responsible for the payment of interest, and fails to demonstrate legal error with respect to the Commission’s decision to hold PG&E’s shareholders responsible for this interest payment.

(D.03-10-023 at 6.)

Second, we find that PG&E’s application merely repeats the same arguments it made in its application for rehearing of D.03-09-017. We have already addressed these arguments in D.03-10-023 and need not repeat them here.

PG&E has failed to demonstrate legal error with respect to the Commission’s decision to hold PG&E’s shareholders responsible for this interest payment, and has offered no reason why its ratepayers should be held responsible instead. Accordingly, its application for rehearing is denied.

Therefore**, IT IS ORDERED**, that:

1. PG&E's Application for Rehearing of Decision 04-01-049 is denied.

This order is effective today.

Dated February 26, 2004 at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners